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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,648	03/27/2006	Ziad Badarneh	RR-599 PCT/US	9640
20427 7590 04/04/2008				
RODMAN RODMAN 10 STEWART PLACE SUITE 2CE WHITE PLAINS, NY 10603				
EXAMINER				
ROLAND, DANIEL F				
ART UNIT		PAPER NUMBER		
3764				
MAIL DATE		DELIVERY MODE		
04/04/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/559,648

Applicant(s)

BADARNEH ET AL.

Examiner

DANIEL F. ROLAND

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 2-4, 7, 14-26, 30 and 35-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 6, 8, 13, 27-29 and 31-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/2/2005
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This is the initial Office Action based on the merits of the 11/559,648 application filed December 2, 2005. Claims 1-42, as originally filed, are currently pending and have been considered below.

Election/Restrictions

1. Applicant's election with traverse of Species 13: claims 1, 5-6, 8-13, 27-29, and 31-34 in the reply filed on February 25, 2008 is acknowledged. Claims 2-4, 7, 14-26, 30, and 35-42 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. The traversal is on the ground(s) that there would not be a serious burden on the Examiner if restriction is not required. This is not found persuasive because Applicant has not provided any showing or evidence to support such a conclusion. Clearly, consideration of additional claims drawn to one or more distinct groups of inventions in diverse categories of subject matter mandates different fields of search within the concomitant hundreds to thousands of patents and time consuming evaluation of those patents which gives rise to a sizeable burden on the examiner.

The requirement is still deemed proper and is therefore made FINAL.

Claim Objections

2. Claims 31-32 are objected to because of the following informalities: i) claim 31 recites the limitation "the step length". There is insufficient antecedent basis for this limitation in the claim; and ii) claim 32 recites the limitations "the nominal step length", "the step length", and

“the sliding function”. There is insufficient antecedent basis for these limitations in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 8-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In claim 8, “the adjusting mechanism consists of a wheel having an elliptical or progressive circumference, where the outer circumference of the wheel exerts pressure on a cylinder that moves a spring towards a movable part having at the opposite end a V-shaped piece that enters a V-shape in another part that is fastened to the underside of the platform” is not enabled by the specification. The specification does not enable one to ascertain how those working elements enable the platform to be tiltably adjustable. The Examiner understands how those elements work together through the description in the specification and the drawings, however, it is unclear how the movement of the V-shaped part translates into movement of the platform. Because claim 9 is dependent upon claim 8 it is also not enabling on its own. The examiner believes it would require undue experimentation to obtain the product as stated in claims 8-9.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 9 recites the limitation "the platform frame" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 5, 6, and 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Lemmer (US Patent 4,277,660).

Regarding claim 1, Lemmer discloses a footrest platform device (Fig 1, #1) characterized in that the platform is limitedly tiltable to both sides transverse to the longitudinal axis of the platform, and that the platform's degree of tiltability is stepwise or steplessly adjustable through the use of an, optionally lockable, adjusting mechanism (Fig 1, #4 and Col 2, lines 55-63).

Regarding claim 5, Lemmer discloses a footrest platform device as in claim 1, characterized in that the platform has a fastening device (Fig 4, #22) that is movable and lockable in different positions along the length of an upwardly and downwardly movable bar (Fig 3, #71 and Col 5, lines 50-68) on the apparatus.

Regarding claim 6, Lemmer discloses a footrest platform device as in claim 1, characterized in that the platform is tiltably supported on a platform frame (Fig 1, #2) or a pair of platform carriages.

Regarding claim 10, Lemmer discloses a footrest platform device as in claim 1, characterized in that between the platform and the frame there are arranged replaceable (Fig 4, #12) or adjustable, preferably elastically yielding, elements that determine the degree of movement of the platform.

Regarding claim 11, Lemmer discloses a footrest platform device as in claim 5, characterized in that said movement is dependent upon the vertical movement of the bar (Fig 3, #71 and Col 5, lines 50-68).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 1, 12-13, 27-29, 31-32, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moon (US Patent 7,097,591) in view of Hlavac et al (US Patent 4,599,915).

Regarding claims 1, 12-13 and 27, Moon discloses a physical exercise apparatus equipped with upwardly and downwardly movable bars (Fig 1, #111) characterized in that each bar at its rear end is pivotally connected to a rotating wheel or crank (Fig 3, #103), that at the other end the bars are connected to articulated arms (Fig 4, #413, 601) that cause a see-saw movement of the bars, on which are mounted footrest platforms (Fig 4, #403) and having grip poles (Fig 1, #123) and grip handles (Fig 1, #201) that are fixed or movable as part of an exercise, but fails to explicitly disclose wherein the platforms are tiltable to both sides transverse to an axis that extends along the length of the bar (claims 1, 12, 27) and wherein the platforms each have a tilting mechanism that is steplessly or stepwise adjustable from a locked position to a tilting function state (claims 1,13).

However, Hlavac et al teaches footrest platforms (Fig 2, #5) wherein the platforms are tiltable to both sides transverse to an axis (Fig 2, #'s 26, 27) and wherein the platforms each have a tilting mechanism that is steplessly or stepwise adjustable from a locked position to a tilting function state (Col 2, lines 55-67).

Moon and Hlavac et al are analogous art because they are from the same field of endeavor - exercise devices.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Moon and Hlavac et al before him or her, to modify the exercise device of Moon to include the tiltable footrest taught by Hlavac et al because it would enhance the functionality of the device by neutralizing any individual abnormal forces caused by

structural or functional imbalance of the leg or foot and to achieve perpendicular forces resulting in maximum efficiency of movement during exercise (Hlavac et al, Col 1, lines 57-61).

Therefore, it would have been obvious to combine Hlavac et al with Moon to obtain the invention as specified in the instant claims.

Regarding claims 28 and 29, Moon discloses footrest platforms as in claim 27, characterized in that the platforms (Fig 4, #403) are slidable along the length of the bars in tracks (Fig 4, #621), such that vertical forces which are applied to the bars cause the platforms to describe a circular movement path relative to the apparatus frame, and that articulated arms (Fig 4, #413, 601) connected to the frame and the platforms move the platforms in a sliding movement along the bars (Col 9, lines 55-67 and Col 10, lines 1-10), and that the tracks have one or a combination of at least two of the following shapes: linear path, curved path, path with several curves, convex path, concave path, convex and concave path (Col 10, lines 11-24).

Regarding claim 31, Moon discloses an apparatus as in claim 27, characterized in that the step length of the platform is by means of an adjusting device (Col 13, lines 4-40) that is capable of being adjustable as a function of the rotational speed of the rotating wheel. Examiner notes that the apparatus user could adjust the step length of the device as a function of the rotational speed to their own desirability with the use of the control panel (Fig 4, #72 and Col 4, lines 13-16).

Regarding claim 32, Moon discloses an apparatus as in claim 27, characterized in that a step length of the platform is adjustable by an apparatus user, and that the adjustment of the step length takes place automatically with the aid of an adjusting mechanism connected to articulated arms for control of a sliding function of the platform (Col 13, lines 4-40).

Regarding claim 34, Moon discloses an apparatus as in claim 32, characterized in that the adjusting device consists of a carriage (Fig 4, #935) to which articulated arms are fastened, that the carriage is movable along a track (Fig 4, #933), and that the positioning of the carriage along the track is adjustable by means of a hydraulically controllable device (Col 13, lines 4-40).

11. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moon (US Patent 7,097,591) in view of Hlavac et al (US Patent 4,599,915) as applied to claims 1, 12-13, 27-29, 31-32, and 34 above, and further in view of Wanzer et al (US Patent 5,320,588).

Moon/Hlavac et al discloses all of the limitations of claim 32 as discussed above and discloses the use of a motor (Moon, Col 13, lines 24-26), but fails to explicitly disclose wherein the carriage is movable along the track upon rotation of a connected threaded rod, and that the rotation of the threaded rod is operated by the motor.

However, Wanzer et al teaches an adjusting mechanism (Fig 2, #22) that comprises a carriage (Fig 2, #82) that is movable along a track upon rotation of a connected threaded rod (Fig 2, #78), and the threaded rod is operated by a motor (Fig 2, #80 and Col 5, lines 5-40).

Moon/Hlavac et al and Wanzer et al are analogous art because they are from the same field of endeavor - exercise devices.

At the time of the invention, it would have been obvious to one of ordinary skill in the art, having the teachings of Moon/Hlavac et al and Wanzer et al before him or her, to modify the exercise device of Moon/Hlavac et al to include the threaded rod taught by Wanzer et al because Moon discloses that any adjustment mechanism can be used to adjust the stride length (Col 13, lines 17-21) and because all the claimed elements were known in the art and it would have

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yielded the same predictable result of controllable adjustment mechanism for altering the stride length.

Therefore, it would have been obvious to combine Wanzer et al with Moon/Hlavac et al to obtain the invention as specified in the instant claims.

Conclusion

12. The prior art made of record is considered pertinent to applicant's disclosure. Please see form PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL F. ROLAND whose telephone number is (571)270-5029. The examiner can normally be reached on Monday - Friday (7:30-5:00) Alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. F. R./
Examiner, Art Unit 3764

/LoAn H. Thanh/
Supervisory Patent Examiner, Art Unit 3764